* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order delivered on: 7th November, 2014*

\+ **CS(OS) 798/2004**

NAVEEN GUPTA ..... Plaintiff
Through Mr.Ashwini Kumar Mata, Sr.Adv. with Mr.Sumant De, Mr. A.K. Mehta & Mr.Raghav Kapoor, Advs.

versus

SANTOSH GUPTA & ORS ..... Defendants
Through None

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

I.A. No.21595/2014

Exemption allowed, subject to all just exceptions.

The application is disposed of.

I.A. No.21593/2014 (u/o XXIII R 3 CPC) & I.A. No.21594/2014 (u/o XXXIX R 1 & 2 CPC)

1. On 23rd July, 2004 plaintiff Sh.Naveen Gupta filed the suit for declaration and injunction seeking declaration that the properties described in para-3 of the plaint constitute estate of deceased father and not property of individual member(s) of the family and the respective instruments alleged by defendants be cancelled and delivered up. Prayer is further made for injunction by way of

consequential relief thereby restraining defendants from claiming or dealing with such properties, as their own as not part of estate of deceased father.

2. When the suit was listed before Court on 16th November, 2005, the following order was passed :

> "The plaintiff is present in court so also the defendants 1, 2 & 3. The plaintiff is the son of defendant No.1 and the defendant Nos.2, 3 & 4 are the brother and two sisters of the plaintiff. The plaintiff and the defendants 1 to 3 have had discussions and they now report that they have discussed the issues arising in the suit amongst themselves and have arrived at some settlement amongst themselves.
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> 2. In this view of the matter, the plaintiff, who is present in court, states that he would now not like to pursue this suit and, therefore, he seeks liberty to withdraw the present suit. I have asked the parties present as to whether they have sorted out the issue amongst themselves. They all answered in the affirmative. I see no reason as to why the plaintiff should not be permitted to withdraw the suit. Accordingly, this suit is dismissed as withdrawn. All the pending applications shall also stand dismissed as withdrawn."

3. After the expiry of almost about 9 years, the plaintiff has filed two above mentioned applications. In the application under Order XXII Rule 3 CPC, the prayers are made that the suit be revived and direction be issued to the defendants to comply and act upon their part of the obligations in terms of the settlement arrived at between the parties in the month of November, 2005. The details of the obligations are given in para 5 of the application. In the second application under Order XXXIX Rule 1 & 2 CPC, the interim order is

sought against the defendants from interfering into peaceful possession of the rights and shares of the plaintiff in the property as per understanding, the detail of which is given in para 6 of the application during the pendency of the present proceedings.

4. Mr.Mata, learned Senior counsel appearing on behalf of the plaintiff, has made his submissions in support of the applications. He has also referred to ***Banwari Lal vs. Chando Devi (Smt.) (Through LRs) and Anr.***, (1993) 1 SCC 581 – para 14 and ***Pushpa Devi Bhagat vs. Rajinder Singh & Ors.***, (2006) 5 SCC 566 – paras 18 and 19.

5. His submission is that though the suit has been dismissed as withdrawn but in the order dated 16th November, 2005 it is recorded that the plaintiff and defendants No.1 to 3 have discussed the issues arising in the suit amongst themselves and have arrived at some settlement amongst themselves and in view thereof, the order of dismissal of suit as withdrawn was passed. He submits that since the defendants have failed to comply with the obligation, therefore, the applications filed by the plaintiff are maintainable for revival of the suit. As far as delay part is concerned, it is stated by him that in the month of October, 2014 it was revealed to the plaintiff that the defendant No.1 has approached the concerned authorities seeking transfer of ownership right qua one of the properties. Various complaints have also been filed by the plaintiff. Therefore, the plaintiff is left with no other choice but to file the present applications to give full effect to the family settlement arrived at between the parties in the month of November 2005.

6. Having heard the learned counsel for the plaintiff, it is settled law that in case the compromise decree has been passed, no appeal is maintainable against the order of Court recording the compromise. Even no independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Order XXIII Rule 3-A CPC and consent decree operates as an estoppel and is valid unless it is set aside by the court. It is also not in dispute that in case the terms and conditions of the settlement are recorded by the Court at the time of passing of the consent decree and if one of the parties to the consent decree has failed to comply his/her obligation the aggrieved party can approach to the same Court who has recorded the consent decree or to file the execution petition for compliance of the obligation against the party who has failed to comply his/her obligation. However, facts in the present case are peculiar and it is to be examined whether the application now filed by the plaintiff for revival of the suit under Order XXIII Rule 3 CPC is maintainable or not.

7. The following is the admitted position in the present case:

(1) The suit for declaration is filed by the plaintiff. When the same was listed before Court on 16th November, 2005, the same was dismissed as withdrawn.

(2) The order records that the plaintiff and defendants No.1 to 3 have discussed the issues arising in the suit amongst themselves and have arrived at some settlement amongst themselves and in that view of the matter, the plaintiff was not

inclined to pursue the suit and he sought liberty to withdraw the suit. The suit was accordingly dismissed as withdrawn.

(3) From the entire record of the case, this Court did not find any terms and conditions of the settlement, if any, arrived at between the parties outside the Court.

8. No application under Order XXIII Rule 3 CPC was filed containing the terms and conditions of the family settlement or otherwise. As far as proposition of law laid down by the Supreme Court in the decisions referred by Mr.Mata is concerned, there is no dispute that in case the terms and conditions are recorded in the consent order and one of the parties fails to comply with the obligation, the aggrieved party has the option to revive the suit or to file the execution. However, the said circumstances in the present case are missing as this Court is not aware which are the issues discussed by the parties themselves outside the Court, what was the nature of the settlement and where are the terms for settlement. By filing of the present application, it appears to the Court that the plaintiff wants to revive the suit proceedings after the suit has already been dismissed as withdrawn. In the application, the plaintiff has raised various issues in the application which are not mentioned in the order dated 16th November, 2005 nor the consent decree was passed on the basis of the written terms and conditions, thus, this Court is not inclined to review the suit proceedings. I am also not convinced with the submissions of the learned counsel for the plaintiff about the long delay of about 9 years in filing the application.

9. Both the applications are accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 07, 2014